IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 36555 of 1998

Between:

Dena Bank Employees Union rep by General Secretary

..... PETITIONER

AND

1. Industrial Tribunal –I, A.P.,
   Hyderabad.
2. General Manager (P), Dena Bank,

   Head Office, Maker Towers,

   Cuffe Parade, Bombay-400 005.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to calling for the records from the Industrial Tribunal -I , Hyderabad quash the award in L.D No. 51797 dt 14-9-98 and subsequently direct the respondent Bank to reinstate the workmen into service with the continuity of service and other consequential benefits.

Counsel for the Petitioner: Mr.G.VIDYASAGAR

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Sri S.Ravindranath

The Court made the following :

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ORDER :

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This Writ Petition is filed by Dena Bank Employees' Union, represented by its Secretary on behalf of one Narsimloo (workman) being aggrieved by the Award dated 14-9-1998 in I.D.No.51 of 1997 on the file of the Industrial Tribunal-I at Hyderabad, wherein the dispute raised and referred to under Sections 10(1)(d) and 2-A of the Industrial Disputes Act,1947 (for short 'the Act') was answered against the workman.

The Union espoused the cause of the workman, who was working as Badli Peon in Tandur Branch of Dena Bank. According to the petitioner, the workman-Narsimloo worked from November,1989 to July,1991 and again from 28-8-1992 to 2-2-1995 continuously as Badli Peon in the respondent-Bank and his services were terminated with effect from 2-2-1995 without following the procedure as contemplated under Section 25-F of the Act. Conciliation proceedings ended in failure and ultimately, Government of India referred the following dispute for adjudication to the Industrial Tribunal-I, Hyderabad:

> "Whether the action of the management of Dena Bank, Hyderabad in terminating the services of Sh.Narsimloo, Ex-Badli Peon with effect from 2-2-1995 without following the Sec.25-F of Industrial Disputes Act is legal and justified ? If not, to what relief the said workman is entitled ?"

Before the Tribunal, on behalf of the workman, W.Ws.1 and 2 were examined and Exs.W1 to W15 were marked. On behalf of the Management, M.Ws.1 and 2 were

examined and Exs.M1 to M3 were marked. After a detailed consideration of the entire evidence, the Tribunal came to the conclusion that the petitioner could not place satisfactory evidence on record in proof of the fact that the workman worked for 240 days in any calendar year prior to the date of termination and he is entitled to be empanelled and absorbed in view of the bipartite settlement entered into between the Management and the Employees' Union and thus he is entitled for reinstatement. Further, the petitioner did not place any material with regard to number of days the workman worked in the calendar year preceding the date of termination and as in Ex.W6-statement, from 1989 to 1991, the Sundays and public holidays were included, but the workman is not entitled to do so. No adverse inference can be drawn against the management for not placing material on record in proof of its claim that the workman worked for less than 240 days in all the calendar years, though there can be no doubt that the workman worked from 1989 to 1991 and again from 1992 to 1995. As the workman was not in continuous service for 240 days as defined under Section 25-B of the Act, there was no violation of the provisions of Section 25-F of the Act. Therefore, he was not entitled for any relief as sought for.

Sri G.Vidyasagar, learned counsel for the petitioner, contended that the Tribunal failed to see, in the facts and circumstances of the case, the burden is on the respondent-management to prove that the workman (W.W.1) did not work for more than 240 days in a calendar year preceding the date of termination, but simply held that the workman did not place any evidence to show that he had worked for 240 days, though it is the case of the workman that he had discharged his initial burden by leading evidence and also by marking Ex.W13. Therefore, the burden shifts on the management to prove that the workman had not worked for 240 days continuously preceding the date of termination, since the entire record is maintained by the management. Further, the management though produced all other record including attendance register for the rest of the years the workman worked i.e. during 1989 to 1993, it did not produce any record with regard to the number of days the workman worked during the year 1994-95, which is the relevant period i.e. the calendar year preceding the date of termination. He also contended that holidays and Sundays should be included for the purpose of calculating 240 days service in a calendar year, though the workman is a Badli worker. In support of his contentions, the learned counsel relied upon the decision of the apex Court in ***H.D. SINGH V. RESERVE BANK OF INDIA*** and also the Judgment of a Division Bench of this

Court in **K.CHANDRAMMA v. LABOUR COURT-I**

In **H.D. SINGH V. RESERVE BANK OF INDIA** (1 supra), it was held as under:

"10. That takes us to the question whether the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent Bank arranged posting Tikka Mazdoors, like the appellant, in such a manner that they were denied the benefits of the Industrial Disputes Act. Since the first respondent Bank disputed the fact that the appellant had worked for sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The advocate who appeared for the appellant before the Tribunal, Shri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written arguments before the Tribunal explaining the mistake committed by the bank in the computation made by it of the number of working days of the appellant. From this affidavit, it is seen that the first respondent Bank put forward a case that the attendance register for the month of July 1976 had been destroyed and that Sundays and other holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days that he worked. In this affidavit, it is seen that he worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The appellant was denied work from July 1976. His affidavit shows that he had worked for 202 days from_July 1975 to July 1976. According to him, if we add 52 Sundays and 17 holidays, the total number of days on which he worked comes to 271 days. The appellant charged the Bank with having tampered with the records. To contradict the appellant's case, the first respondent Bank did not produce its records. The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of the appellant. These grounds are met by the first respondent Bank in their counter-affidavit filed in this Court by stating that "when the matter was before the Industrial Tribunal, the registers in question were filed in another case before the Industrial Tribunal-cum-Labour Court and produced in that Court. However, I submit that now the attendance register has been destroyed but the payment registers are available with the respondent Bank as proof of the number of days on which the appellant worked". In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July 1975 to July 1976, is true.

14. We thought it necessary to refer to the factual details in the case only to show our concern at the manner in which the employer in this case, the Reserve Bank of India, who should set a model for other employers being a prestigious institution, behaved towards its employees. It must have been his helpless condition and abject poverty that forced the appellant to accept a job on Rs.3 per day. Still see how he has been treated. We will not be far from truth if we say that the bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial Law. It has disturbed us to find that the appellant was denied job because he had become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads and post-graduates in hundreds, if not in thousands, apply for the posts of peons. It has been our sad experience to find employers trying to stifle the efforts of employees in their legitimate claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper-technical pleas. Industrial adjudication in bona fide claims have been dragged on by employers for years together on such pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly. This would help industrial peace. It is too late in the day for this Court to alert the employers that their attempt should be to evolve a contended labour. We do not forget at the same time the fact that it is necessary for the labour also to reciprocate to prevent industrial unrest. In this case, for example, the bank should have treated the appellant as a regular hand in List II. Instead, the bank has, by adopting dubious methods, invited from us, remarks which we would have normally avoided."

In **K.CHANDRAMMA v. LABOUR COURT-I** (2 supra), this Court observed as

under:

> "**.....**another principle which in cases like one in hand should be applied is the doctrine called '*res ipsa loquitur'* which is a rule of evidence generally applied to accidents, but nonetheless is of great value in weighing evidence in all such cases where the evidence is under exclusive control of the opposite party. Under this doctrine, when a thing which causes injury, without fault of injured person, is shown to be under exclusive control of opposite party and injury is such as in ordinary course of things does not occur if the one having such control uses proper care, it affords reasonable evidence, and in absence of an explanation, that injury arose from no fault of the opposite party, the Court would presume in favour of the injured.
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> 4. The above two doctrines when combined to study the case of an illiterate woman, who is a sweeper and since she does not know to read and write at the same time is not in the control of the evidence even in respect of her working continuously for 240 days, it appears to us to be reasonable to hold that grave injustice would be done if, without calling upon the respondent-employer to produce all the material in support of its claim that the petitioner-appellant has not worked for 240 days continuously, the benefit of the claim should be given to her and she should be directed to be reinstated."

Sri S.Ravindranath, learned counsel for the respondent-Bank, contended that it is for the workman to prove that he had worked for 240 days in a calendar year preceding the date of termination. In this case, the Tribunal gave a categorical finding on the basis of evidence that the workman failed to adduce any evidence to show that he had worked for 240 days in a calendar year preceding the date of termination. Therefore, the termination of the workman cannot be said to be illegal or against the provisions of Section 25-F of the Act. Further, the learned counsel submitted that, admittedly, the workman was only a Badli Peon and as such, he could not have worked for 240 days in a year and even according to Ex.W13-pass book, it is only evident as to the payment of Rs.150/- per month, may be, till the date of termination. But, that itself does not mean that he has worked for more than 240 days to attract the provisions of Section 25-F of the Act and the plea that if the Sundays and holidays are included, he had worked for more than 240 days cannot be accepted, since he was only a Badli worker and Badli worker is not entitled to count the holidays and Sundays for the purpose of Section 25-B of the Act. In support of his contention, the learned counsel relied upon a reported Judgment in **RANGE FOREST OFFICER v. S.T.HADIMANI** wherein it was held that in the absence of proof of receipt of salary or wages or record of appointment, mere filing of an affidavit by a workman is not sufficient evidence to prove that he had worked for 240 days in a calendar year preceding his termination.

I have gone through the Award passed by the Tribunal and also the evidence on record.

The Tribunal noticed that Ex.W6 statement filed by W.W.1 (workman) would show that he was paid Rs.15/- per day on all the days he worked and he worked for more than 240 days in a calendar year prior to his termination from 3-10-1989 to 31-7-1991 and a perusal of Ex.M1 letter dated 24-6-1993 sent by the Branch Manager to the Regional Office would show that the workman was engaged as per need whenever the sub-staff was on leave from November,1989 to 1991 and again from 28-8-1992 as mentioned in the letter i.e. in the year 1989, he worked for 18 days, in 1990 for 182 days, in 1991 for 99 days, in 1992 for 103 days and in 1993 upto 31-5-1993 for 111 days. Ex.M1 is, however, silent with regard to number of days the workman worked during the year 1994-95. The management, however, filed Ex.M2-book containing bunch of vouchers – 243 in number – from 6-6-1991 to 27-7-1992. The said book Ex.M2 is styled as outward register. Similar registers earlier to 1991 and subsequent to 27-7-1992 are not filed, though it is not in dispute that workman worked till February,1995. Ex.W13 passbook, which is same as Ex.W2, would show that wages paid to him were credited to his account bearing No.4287 opened in the respondent-Bank from 20-9-1992 to 10-3-1995, which would show that his wages were deposited from time to time either weekly, daily or monthly as spoken to by M.W.2. But, the respondent-Bank did not produce any record with regard to the number of days the workman worked during the year 1994-95, though as per Ex.M1, which is equivalent to Ex.W7, which was sent to the Regional Office in response to Ex.W9 under the cover of Ex.W11-letter, the workman did not work for 240 days in any calendar year from 1989 to 1993. It was also observed by the Tribunal that though the respondent-Bank was directed to produce certain records called for by the petitioner, he did not file the same on the ground that they are not available due to afflux of time. Having found so, the Tribunal assumed that the burden of proof is on the workman and he had not produced any evidence in that regard; as such, inferred that the workman had not worked for 240 days in the calendar year preceding the date of his termination.

As seen from above, the workman had marked Ex.W13-pass book, which shows that he was paid salary from 20-9-1992 to 10-3-1995 and there is no dispute that the workman worked continuously during that period. Though the Management was able to produce Ex.M1 letter dated 24-6-1993 stating that the workman worked for particular number of days in the respective years, it is strange that the management, though directed by the Tribunal had not produced certain records

called for saying that due to afflux of time, they were not available, which is very unfortunate. In this connection, it is pertinent to note that the respondent-Bank produced the records from 1989 to 1993, but with regard to the records relating to 1994-95, it was stated that due to afflux of time, it could not produce the same. It is ununderstandable as to how the Management would say that it could not produce the records for the later period of 1994-95 due to afflux of time, though it had produced the earlier records from 1989 to 1993. This itself shows that the respondent-bank wantonly evading to produce the records. The workman had, in fact, discharged his initial burden, by adducing evidence and marking Ex.W13. It was not in dispute that the workman had worked upto the date of his termination. The Management had adduced evidence as to all the details including the number of days the workman worked in the respective years, but did not produce any evidence for the relevant period i.e. 1994-95. The burden then shifts to the management to prove that the workman had not worked for 240 days, which the management failed to do discharge. It is for the management, which is in the custody of the relevant documents to show that the workman had not worked for 240 days continuously. Therefore, the Tribunal erred in holding that the workman has not discharged his burden in proving that he worked continuously for 240 days. In a case like this, having produced some evidence and withheld information for the relevant period would clearly show that the management was adopting tactics to avoid the just adjudication. It is the management, which is in the exclusive control of the records. Therefore, it was for the management to adduce evidence once the initial burden is discharged by the workman. Therefore, I agree with the submissions made by the learned counsel for the petitioner that the burden is on the management to prove its case that the workman had not worked for 240 days, in the light of the Judgments reported in **H.D. SINGH V. RESERVE BANK OF INDIA** (1 supra) **K.CHANDRAMMA v. LABOUR COURT-I** (2 supra). The Judgment relied upon by the learned counsel for the respondent-bank in **RANGE FOREST OFFICER**'s case (3 supra) has no relevance, since that was a case where an affidavit was filed and no other material was placed before the Tribunal to prove that the workman had worked for 240 days continuously. This is not one such case. There is ample evidence produced by the workman as stated above. Further, as laid down in the above Judgment of the apex Court in **H.D. SINGH V. RESERVE BANK OF INDIA** (1 supra) even the holidays and Sundays also could be included for the purpose of computing 240 days in a calendar year. That was also a case of Badli worker before

the Supreme Court identical to the case on hand.

For all the above reasons, the writ petition is allowed and the impugned Award is set aside. The matter is remitted back to the Industrial Tribunal and the Tribunal may give an opportunity to the management to lead evidence only to the aspect that the workman had not worked for 240 days continuously during the relevant period i.e. one calendar year preceding the date of termination, apart from the evidence already available on record, and pass appropriate award, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

20th August, 2004

Prk

LR COPIES TO BE TYPED

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this twentieth day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Industrial Tribunal –I, A.P.,
   Hyderabad.
2. General Manager (P), Dena Bank,

   Head Office, Maker Towers,

   Cuffe Parade, Bombay-400 005.

3. 2CCs to Govt.Pleader for Labour, High Court Buildings, Hyderabad (O.U.T.)

4. 2CD copies